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No. 86-1123

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

RELIGIOUS TECHNOLOGY CENTER, a California corporation, and CHURCH OF SCIENTOLOGY INTERNATIONAL, INC., a California corporation,
Petitioners,

vs.

JON ZEGEL, an individual; DAVID MAYO, an individual; CHURCH OF THE NEW CIVILIZATION (dba ADVANCED ABILITY CENTER), a California corporation,
Respondents.

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTORY STATEMENT

Petitioners hereby reply to Respondents' Opposition in order to correct certain material misrepresentations and to respond to arguments made for the first time.

Petitioners seek this Court's review on whether a private plaintiff is entitled

to injunctive relief under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1964 ("RICO"). (See Pet. 12-45) Petitioners also request this Court's determination of whether the Ninth Circuit's holding that Petitioners are not entitled to the protection of the California Trade Secrets Act unconstitutionally violates Petitioners' First, Fifth and Fourteenth Amendment rights. (See Pet. 45-65)

Respondents attempt to create confusion in order to convince this Court that the instant case is merely "a religious dispute between two factions of the Scientology religion." (Opp. 1) In truth, this case is purely and simply a stolen documents case. Respondents have never been prohibited from practicing any religious beliefs. The District Court's previous injunction only prohibited Respondents use of Petitioners'

stolen materials.[1]

Respondents also misrepresent the record in asserting that "there is no evidence - none - that Respondents aided or participated in that theft, knew of it in advance or had anything to do with it." (Opp. 3-4)

During a two day evidentiary hearing

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1. The stolen advanced or upper level materials at issue herein are referred to as NED for Operating Thetans ("NOTS"). The ideas and concepts that comprise the NOTS materials are a culmination of over 30 years of research and experience by the religion's founder, L. Ron Hubbard. Mr. Mayo did assist Mr. Hubbard's development of the NOTS materials, however, Mr. Mayo's role was limited to that of an "auditor" and compiler. [An auditor is a person who through Church training becomes skilled in the application of the religious technology of Scientology.]

Although Respondents have claimed that they "began using their advanced scriptures in August 1983" (Opp. 3), the materials which Respondents submitted to the District Court for comparison were all dated January 1984, one month after the theft of Petitioners' materials. (See Pet. 5, n.1).

It was these January 1984 materials which the District Court found could not have been created without reference to the Petitioners stolen materials.

on Petitioners' Motion For A Preliminary Injunction, the District Court was presented with an abundance of documentary evidence and oral testimony which, according to the Court, clearly established the nexus between the original thieves - Robin Scott, Ron Lawley and Morag Bellmaine - and the Respondents herein. The Court stated in its Further Findings that:

> The Court did not find the testimony of David Mayo credible on the issue of how he and the Advanced Ability Center came to have in their possession the documents in question in this lawsuit (i.e., those produced by the Advanced Ability Center ("AAC") for inspection by the Court.) The Court does not believe that anyone, even Mr. Mayo, could have reproduced from memory materials substantially identical to those stolen in Denmark from the Church. The documents are too voluminous, too detailed and too nearly identical in substance and wording to have been created by Mr. Mayo without reference to the stolen documents.
>
> The District Court, based on all the

evidence and facts before it and after appropriately applying neutral principles of law in its own in-camera comparison of the documents, determined that this was a stolen documents case which constituted a clear violation of the RICO Act. The Court further concluded that the documents at issue constituted trade secrets under California law.

II. THE AVAILABILITY OF INJUNCTIVE RELIEF UNDER RICO IS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT

Petitioners respectfully submitted in the Petition for Writ of Certiorari that the Ninth Circuit's determination that private injunctive relief is unavailable under RICO is an important question of federal law which has not been, but should be, settled by this Court. Rule 17.1(c). Respondents argue in opposition that the question is not important and that it "rarely arises because RICO liability is

purely derivative and injunctive relief is available based on the underlying predicate claims - if those claims have merit." (Opp. 6) This is a deceptively appealing but inaccurate statement and the Court need look no further than this very case for a demonstration of its falsity.

The underlying predicate acts alleged in this case consist of mail and wire fraud and interstate transportation of stolen propertly which present no independent basis for injunctive relief. This is so despite the fact that the Court of Appeals determined that Petitioners had adequately alleged a pattern of racketeering and had satisfied RICO's jurisdictional requirements. Moreover, the District Court found a likelihood of success with respect to the merits of Petitioners' claims. Under the Ninth Circuit's ruling, however, the merits of a party's underlying predicate RICO claims are irrelevant,

as is the nature of the party's injury even where it is irreparable.

Respondents' argument completely ignores important implications of the Ninth Circuit's restrictive interpretation. The goal of RICO, set forth in the "Statement of Findings and Purpose" of the Organized Crime Control Act of 1970, is "to seek the eradication of organized crime by strengthening the legal tools in the evidence gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime." Pub. L. No. 91-452, 84 Stat. 923 (1970).[2]

The dramatic impact of the Ninth Circuit's decision on RICO's enforcement

2. As the Ninth Circuit itself recognized, precluding enforcing parties from employing injunctive relief hamstrings the statute's effect. (796 F.2d at 1089)

is already apparent. The point is classically illustrated by a recent RICO case in which the Federal Deposit Insurance Corporation (FDIC) sought to recover millions of dollars from defendants who allegedly drained the banks' assets through an extensive pattern of fraudulent conduct including a "heist money" scheme to use $3 million of the banks' assets in an attempt to purchase $9 million in stolen currency. Federal Deposit Insurance Corp. v. Antonio, No. 85-C-1298 (D.C. Colo. Dec 16, 1986). In response to the FDIC's request for an injunction based on RICO to enjoin defendants from disposing of or dissipating the assets pending trial on the merits, the District Court observed that courts remain divided on the availability of injunctive relief. Citing the Ninth Circuit's decision (but without actually deciding the issue), Judge

Carrigan warned that "Courts must be careful not to infer a right of action or remedy that Congress has not expressly created or clearly implied." Id. at 3.

Fortunately for the FDIC in this particular case, the Colorado Organized Crime Act, Col. Stat. 18-17-(106) ("COCA"), provided the Court with an alternate basis upon which it granted the injunction. This equitable parachute afforded by Colorado's RICO statute, however, represents the rare exception and not the rule. Out of 25 states that have "little RICO" statutes, only fourteen include fraud offenses as predicate acts and only seven expressly provide for private injunctive relief. 4 R.L.R. No. 5 at 660 (1986). Yet the problems RICO is intended to address are nationwide and the FDIC example is not unique.[3]

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3. For the fifth year in a row bank failures continue to break all past [Footnote Cont'd]

There is no doubt that the Ninth Circuit's ruling drastically limits the options available to all RICO victims. Not only will those victims be unable to use RICO to maintain the status quo and thereby preserve meritorious civil RICO claims, but even in the most egregious cases involving legitimate businesses infiltrated by organized crime, equitable relief will be unavailable under RICO. In view of RICO's remedial purposes "nowhere more evident than in the provisions of a private action for those injured by racketeering activities," the question of whether injunctive relief is also avail-

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[Footnote 3 Cont'd]
depression records at a rate of more than 100 a year. N.Y. Times, January 5, 1987, Col. 1 p.20. A recent congressional study concluded that criminal activity by insiders was a major contributing factor in one half of bank failures and a quarter of savings and loan failures. H.R. 137 98th Cong. 2nd. Sess. at (1984). In 1985 the Attorney General reported the cost of white collar crime as approximately 200 billion dollars a year. Annual Report of the Attorney General at 42 (1985).

able is extremely important and worthy of this Court's consideration. S.P.R.L. v. Imrex Co. Inc., 105 S.Ct 3275 (1985).

II. THIS CASE PROVIDES AN APPROPRIATE CONTEXT IN WHICH TO DECIDE THE AVAILABILITY OF PRIVATE INJUNCTIVE RELIEF UNDER RICO

Respondents contend that this is a RICO case in name only and that it would be unfair to other litigants to resolve the availability of injunctive relief at this juncture because this case is not typical of RICO litigation. This argument is intellectually dishonest.

First, Respondents' assertion that "in fact, there is no genuine RICO claim here" (Opp. 13) is at odds with the Ninth Circuit's express recognition that "the Church apparently satisfied the federal jurisdictional requirements for a civil RICO damages action." 796 F.2d at 1080. More important, however, is the fact that the availability of injunctive relief

under RICO is purely a matter of statutory interpretation. Resolution of this discreet question in no way turns upon the typicality of the particular RICO claims, the nature of the parties or the character of the predicate acts which constitute the alleged pattern of racketeering activity. Either private injunctive relief is available under RICO or it is not. The question is not "fact dependent" and its resolution one way or the other applies to all private parties be they banks, churches, corporate securities fraud victims or restaurants infiltrated by organized crime figure.[4] The complete bar to private injunctive

4. Respondents' complaint that the record contains "only the evidence that was compiled during the preliminary injunction hearing" (Opp. 13) misses the mark. The issue is as readily resolved in the context of a motion to dismiss in the absence of any facts as it is here where an evidentiary hearing was held. Respondents advance no reason why additional evidence which might be adduced during a trial on [Footnote Cont'd]

relief under RICO held by the Ninth Circuit applies to all parties. Accordingly, it is impossible to fathom Respondents' suggestion that a review of the issue in this case would be "unfair to other litigants who face the issue in typical RICO settings." (Opp. 13) Moreover, the Respondents' argument completely disregards this Court's recognition in Sedima, that RICO is to "be liberally construed to effectuate its remedial purposes". 105 S.Ct. 3275 at 3286. To let the Ninth Circuit's ruling stand unquestioned would be fair to no one.

Nothing in RICO's text or legislative history precludes Churches from relying upon RICO's remedial provisions when they are victims of racketeering activity. Given that Petitioners' RICO claims are

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[Footnote 4 Cont'd]
the merits would be necessary or helpful to determine whether preliminary injunctive relief is available in RICO cases.

predicated on allegations of interstate transportation of stolen property and mail and wire fraud, this case is sufficiently typical of RICO litigation for resolution of the injunctive relief question.[5] Resolution of the injunctive relief question does not require this Court to pass on the merits of the underlying dispute concerning ownership or the use of Church property or any question remotely constitutional in nature.

III. THE AVAILABILITY OF INJUNCTIVE RELIEF UNDER RICO IS RIPE FOR THE COURT'S REVIEW

Respondents give primary emphasis to their point that the Ninth Circuit is the only appellate court to have squarely

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5. As the District Court recognized, and the Court of Appeals did not dispute, this is a "stolen documents case". (App. A, 8) The mere fact that the parties ascribe a spiritual as well as an economic value to the property at issue does not negate the "business" or "commercial" aspects of Petitioners' RICO claims. ". . . the theft appears to have been as much for economic as for doctrinal reasons." (Id).

determined that private injunctive relief is not available under RICO and no appellate court has squarely found otherwise. (Opp. 7-10) This does not, of course, undermine the importance of the federal question nor does it satisfactorily explain why this Court should decline review at this time until a more direct conflict exists at the circuit level.

As Respondents concede, the issue has been extensively analysed by the Ninth Circuit and raised by the Second, Fourth and Eighth Circuits. (Opp. 8-9) Respondents do not suggest how further debate in the courts will bring the issue into any sharper focus. While the division among the district courts alone may not, in and of itself, mandate this Court's review, given the importance of the question and the haphazard manner in which it is being answered, Petitioners respectfully submit that judicial prudence

dictates it be resolved sooner rather than later.[6]

IV. THE APPELLATE COURT'S APPLICATION OF CALIFORNIA LAW VIOLATES PETITIONERS' CONSTITUTIONAL RIGHTS

In reviewing Petitioners' trade secret claim, the Ninth Circuit stated:

> In its supplementary findings of fact, the district court noted that the new church offers its services to its adherents at a price "substantially less than that charged by the Church". However, the church alleged no competitive market advantage from

6. The availability of injunctive relief has long been the subject of exhaustive debate by courts and commentators alike. Respondents citation to "the wealth of commentary" supporting the decision of the Ninth Circuit, however, is disingenuous. (Opp 8, 21 n.9) For example, the Report of the Ad Hoc Civil RICO Task Force of the ABA Section of Corporation, Banking and Business Law at p. 341 (1985), of which Mr. Weissman was Executive Director, supported the need for preliminary equity relief. Mr. Fricano's article was directly relied upon by the District Court in Chambers Dev. Co. v. Browning-Ferris Indus., 590 F.Supp. 1528, 1540-41 (W.D. Pa. 1984) (Court refused to dismiss claims for injunctive relief). Professor Blakey was quoted word for word by Judge McMillian of the Eight Circuit for the proposition that injunctive relief is available under RICO. (Pet. 27-28)

> maintaining the secrecy of its higher level materials. Indeed, to do so would raise grave doubts about its claim as a religion and not-for-profit corporation.
>
> . . .
>
> The value of the confidential materials is thus spiritual not commercial, and the materials cannot be said to have the "independent economic value" necessary to qualify as a protectible trade secret.

796 F.2d at 1091 (emphasis added).

The Court has thus construed the California Trade Secrets Statute to mean that a religious non-profit organization, such as Petitioners, is excluded from the protection afforded by the Act as a matter of law. Contrary to Respondents' assertions, Petitioners do not seek review of any factual or evidentiary determination arrived at below concerning whether Petitioners met the necessary elements of the statute. Nor do Petitioners seek review of the constitutionality of the California statute as written.

Rather, it is Petitioners' position that the Appellate Court's construction of the statute, as applied to Petitioners, is an unconstitutional violation of its Due Process and Equal Protection Rights.

The unequal application of a state statute which is fair on its face is clearly a denial of equal protection. The California Trade Secrets Statute is without question neutral on its face. Indeed, the Act provides that any legal entity is entitled to protection if (1) the trade secret is subject to reasonable efforts to maintain its secrecy, and (2) if it derives actual or potential independent economic value. (App. C, 86)

The Court of Appeals arbitrary and prejudicial determination denying Petitioners the protection afforded by the Act was based on the suspect classification of religion, which is clearly subject

to a "strict scrutiny" level of review. It is submitted that such a classification fails to serve any "compelling governmental interest" and therefore cannot constitutionally be allowed to stand.

Finally, Respondents' reliance on dictum within the Ninth Circuit's opinion concerning establishment clause concerns is misplaced. (Opp. 25). Because this is clearly a stolen documents case, Respondents cannot insulate their illegal activity by asserting protection under the First Amendment. Nevertheless, this Court has firmly established that civil courts may apply neutral principles of law to resolve church property disputes without violating first amendment guarantees. As this Court stated in Presbyterian Church v. Hull Church, 393 U.S. 440 (1969):

> It is obvious, however, that not every civil court decision as to property claimed by a religious

> organization jeapardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without "establishing" churches to which property is awarded.

Id. at 449. (See also, Pet 48-50)

V. CONCLUSION

Based on the reasons stated above, in addition to those in the original petition, Petitioners respectfully request that this Court grant Certiorari.

Dated: February 18, 1987

Respectfully submitted,

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